



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF I-D-R-

DATE: AUG. 9, 2017

APPEAL OF PROVIDENCE, RHODE ISLAND FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Nigeria currently residing in the United States, has applied to adjust status to that of a lawful permanent resident. A foreign national seeking to be admitted to the United States as an immigrant or to adjust status must be "admissible" or receive a waiver of inadmissibility. The Applicant has been found inadmissible for fraud or misrepresentation and seeks a waiver of that inadmissibility. *See* Immigration and Nationality Act (the Act) section 212(i), 8 U.S.C. § 1182(i). U.S. Citizenship and Immigration Services may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The Director of the Providence, Rhode Island, Field Office denied the application. The Director determined that the Applicant was inadmissible for fraud or willful misrepresentation and concluded that the Applicant had not established that denial of admission would result in extreme hardship to his qualifying relative.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director erred in not finding that his qualifying relative would suffer extreme hardship if admission is denied.

Upon *de novo* review, we will sustain the appeal.

**I. LAW**

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act.

There is a waiver of this inadmissibility if refusal of admission would result in extreme hardship to the United States citizen or lawful permanent resident spouse or parent of the foreign national. Section 212(i) of the Act.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N

Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent’s parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

## II. ANALYSIS

The issues on appeal are whether the Applicant has established extreme hardship to a qualifying relative if he is denied admission and if so, whether a favorable exercise of discretion is warranted. The Applicant does not contest inadmissibility, a finding supported by the record.<sup>1</sup>

On appeal the Applicant submits statements from himself and his spouse, mental health documentation pertaining to his spouse, and financial documentation. With his waiver application the Applicant submitted a statement, a criminal records report, financial and employment documentation, a statement from his spouse, supports letters from family members, mental health documentation, and country condition information. We have considered all the evidence in the record.

The totality of the evidence, including the additional evidence submitted on appeal, now demonstrates that the Applicant’s spouse would experience extreme hardship if admission is denied. Additionally, the evidence shows that the Applicant warrants a waiver of inadmissibility as a matter of discretion.

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<sup>1</sup> The record establishes that the Applicant misrepresented his marital status when he applied for a nonimmigrant visa in 2013. The visa was revoked after he entered the United States due to concerns that the Applicant may have misrepresented his employment with the Nigerian government and his intent to attend a conference in the United States. On appeal the Applicant admits to the misrepresentation, apologizes for providing incorrect information on his nonimmigrant visa application, and states that he understands the reasons behind the finding of misrepresentation.

#### A. Hardship

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or qualifying relatives, in this case his U.S. citizen spouse. The Applicant's spouse asserts that if she remains in the United States without the Applicant, she will experience emotional and financial hardship. She states that she developed a gambling addiction lost her home to foreclosure, she had a childhood filled with abuse and violence, and it was not until she met the Applicant that her life turned around. She maintains that the Applicant inspired her to pursue a career and obtain treatment for depression and addiction. She contends that prior to meeting the Applicant, she was unable to open her own bank account and was not able to manage her income, but with her husband's support, she is able to make ends meet, is paying off debt, and is in control of her gambling addiction. She concludes that as she is recovering from an addiction and is plagued by mental illness, any change to her current life would not only be disruptive but devastating because her psychological state is contingent upon her spouse's support and presence in her life.

In support, the Applicant submits documentation establishing that his spouse is being treated for depression, attention deficit hyperactivity disorder, and post-traumatic stress disorder and is seen once a month for medication monitoring and adjustments. The documentation also establishes that the Applicant's spouse struggles with a severe gambling addiction, has previously been homeless, and has tried to commit suicide, and the Applicant is a stabilizing force in her life. The Applicant's spouse's psychotherapist, who treated her for over a decade, details her past mental health issues and the hardships she will encounter were she separated from her husband. The Applicant's spouse has also submitted letters from her father, daughter, and son explaining the hardships she will face were she to be separated from the Applicant. The Applicant's spouse's father concludes that his daughter does not handle loss very well and can be self-destructive when her ability to cope is exhausted. The record also includes evidence of the Applicant's gainful employment in the United States and contribution to the finances of the household.

The Applicant's spouse also claims that she would experience hardship if she relocated to Nigeria. She states that she would experience emotional hardship due to long-term separation from her extended family, including her children and father, with whom she states she has close emotional ties. She also asserts that mental health services are very expensive in Nigeria, and a disruption in her care and a move to an unfamiliar setting would cause her psychological hardship. She also states that she was born and raised in the United States and she is unfamiliar with the country, culture, and language in Nigeria. She asserts that she would experience financial hardship due to the lack of employment opportunities in Nigeria. She also expresses concern for her safety and well-being in Nigeria in light of the presence of terrorist groups like Boko Haram.

The Applicant has submitted evidence of his spouse's family and employment ties in the United States. The record also establishes that the Applicant's spouse was born and raised in the United States. The Applicant's spouse's mental health services provider confirms that relocation to Nigeria would cause the Applicant's spouse hardship as she would not be able to get the medications she needs and her quality of life and ability to function would drastically decline. The Applicant has also submitted documentation regarding the problematic country conditions in Nigeria. The U.S.

Department of State has issued a travel warning for Nigeria addressing the risks of travel there. In addition, the U.S. Department of State confirms that medical facilities are generally poor in Nigeria and many medicines are unavailable.

The evidence, considered both individually and cumulatively, establishes that the Applicant's spouse would experience extreme hardship if the Applicant is denied admission, whether she relocates to Nigeria or remains in the United States without him.

#### B. Discretion

We now consider whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 299 (BIA 1996). We must "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted). In evaluating whether to favorably exercise discretion,

the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*Id.* at 301 (citations omitted). We must also consider "[t]he underlying significance of the adverse and favorable factors." *Id.* at 302. For example, we assess the "quality" of relationships to family, and "the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed]." *Id.* (citation omitted).

The positive factors in this case are the hardships to the Applicant's spouse if the Applicant is unable to reside in the United States, the Applicant's employment and the payment of taxes, letters in support from the Applicant's spouse's family members, the Applicant's apparent lack of a criminal record, and the Applicant's expressions of remorse for his immigration violations. The negative factors in this case are the Applicant's fraud or willful misrepresentation with respect to his nonimmigrant visa application and periods of unlawful presence in the United States. We find that

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the positive factors outweigh the negative factors in this case, and a favorable exercise of discretion is warranted.

### III. CONCLUSION

The Applicant has demonstrated that his spouse would experience extreme hardship and that he warrants a favorable exercise of discretion.

**ORDER:** The appeal is sustained.

Cite as *Matter of I-D-R-*, ID# 389650 (AAO Aug. 9, 2017)